

No protest rec'd  
Released to DD  
10/8/96

CP:E:EQ:T:5  
AUG 26 1996

Employer Identification Number: [REDACTED]  
Key District: Western (Los Angeles, CA)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were created "to promote, sponsor, and facilitate activities that will enhance and expand the knowledge and capabilities of soaring pilots and individuals who desire instruction in the art and science of motorless flight", as stated in your Articles of Incorporation. As stated in your Bylaws, your purpose is "to instruct members and the public in the art of motorless flight and to construct, own, maintain, buy, sell, and lease gliders, sailplanes, other aircraft and flight maintenance equipment used in connection with them; to conduct and participate in national and regional flight contests; to own, lease or provide Club premises and a social gathering place for [your members]; and to conduct all the transactions necessary and incidental to the foregoing, but not for profit."

In actual operation, you own and maintain sailplanes (currently [REDACTED]), which your members fly, and related accessory equipment. Monthly dues are \$[REDACTED] and entitle a member to five free hours of sailplane time per month. Initiation fees are either \$[REDACTED] or \$[REDACTED] depending on the flight level, entry or advanced, the member desires. Introductory/sightseeing flights at \$[REDACTED] or \$[REDACTED], are offered to the public.

Only active members can pilot sailplanes owned by you. Members must also volunteer time and assistance for your operations and for launching and recovering the sailplanes. You conduct some educational activities directed toward the public but most educational and other activities are directed only to members and their efforts to attain various sailplane pilot ratings or certifications. You have purchased sailplanes from members, apparently without obtaining independent appraisals as

to the current fair market value of the sailplanes. In your statement explaining your mission and purpose, you state that the "chief benefit of membership is that the distribution of associated costs and liabilities among members of an organized group makes learning and developing soaring skills safe, affordable, and more enjoyable." New members are accepted on a trial basis and, at the end of the trial period, each must be approved by two thirds of the current members to continue as a member.

Section 501(a) of the Code, in part, provides for the exemption from federal income tax for organizations described in section 501(c).

Section 501(c)(3) of the Code, in part, provides for the exemption of organizations which are both organized and operated exclusively for charitable purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individual or shareholder.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations, in part, states that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states, in part, that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations states, in part, that the words private shareholder or individual refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary that the organization establish that it is not organized or operated for

the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" as used in section 501(c)(3) of the Code includes, among other things, the advancement of education.

In Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945), it was held that a single non-exempt purpose, if substantial in nature, would preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

In the case of Syrang Aero Club v. Commissioner, 73 T.C. 717 (1980), the court held that the Club, which owned one airplane which it rented only to its members at low cost, was not operated, despite some otherwise qualifying activities, exclusively for educational, charitable, or other exempt purposes because its recreational purposes were substantial.

Rev. Rul. 71-395, 1971-2 C.B. 228, describes a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works. The gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works. Additional artists are admitted to membership by approval of the existing members. The gallery is open to the public six days a week. No admission is charged. The gallery retains a commission from sales and rental sufficient to cover the cost of operating the gallery. Any deficits that occur are covered by special assessments of the members. The cooperative gallery in this case is engaged in showing and selling only the works of its own members. It serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects. The Rev. Rul. holds that the organization is not organized and operated exclusively in furtherance of exempt purposes and is not exempt under the provisions of section 501(c)(3) of the Code.

You were created as a vehicle whereby your members could work together for their mutual benefit, i.e., better options for flying sailplanes at less cost than otherwise. Your members anticipate a return commensurate with the time and money they invest. They receive this in the form of the variety of types of sailplanes available to them, "free" flying time, and lower than commercial rates for additional time. The only beneficiaries of your available sailplanes and equipment are your members, as they are the only ones able to use them.

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Maintaining sailplanes solely for the use of your members is a private rather than a public benefit. You appear to be organized and operated for the private benefit of your members. Thus, section 1.51(c)(3)-1(d)(1)(ii) of the regulations would operate to preclude exemption. Your funds are expended to provide this benefit to your members. Your members have a private interest within the meaning of section 1.501(a)-1(c) and, under section 1.501(c)(3)-1(c)(2) this would constitute prohibited inurement which would also preclude recognition of exemption. The purchasing of the sailplanes from your members, depending on fair market value, might also have constituted inurement and/or the serving of private interests.

You are operating on fees received and the fees received generally cover the cost of your operations. As the fees come from the individuals being served and are set to cover costs, you are not operating in a charitable manner. Rather, although you are not a cooperative, you are similar to the organization in Rev. Rul. 71-395 which did not qualify because its purpose was to sell the works of the artists in the cooperative, i.e., serve the members, who received a direct private benefit. In addition, as you exist to provide aircraft for your members' use at a lower cost to them, you are operating in the manner of Syrang, supra, which was also held not to qualify. Thus, you are primarily serving private interests and any public benefit is incidental to the private benefit provided.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or

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decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
Attn: CP:E:EO:T:5, Room 6539  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Technical Branch 5

cc: District Director  
Western Key District Office (EP/EO)  
Information Copy: Chief, EP/EO Division

cc: State Officials

CP:E:EO:T:5

8/23/96

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